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Supreme Court, U.S.
FILED
AUG 7 - 2006
OFFICE OF THE CLERK

No. 06-25

IN THE

Supreme Court of the United States

JACKIE BROOKS,

Petitioner,

v.

AMERICAN GENERAL FINANCIAL SERVICES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

BENJAMIN C. ACKERLY
Counsel of Record
TYLER P. BROWN
HUNTON & WILLIAMS, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200

Attorneys for Respondent

202658

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether Petitioner has presented compelling reasons for this Court to review the decision of the U.S. Court of Appeals for the Eighth Circuit, which affirmed the discretionary denial by the bankruptcy court of Petitioner's motions to reopen his bankruptcy case?

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

No publicly held company directly owns 10% or more of the stock of Respondent, American General Financial Services, Inc., formerly known as American General Finance, Inc. However, Respondent is wholly owned by American General Finance Corporation, which is wholly owned by American General Finance, Inc., which is wholly owned by American General Corporation, which is wholly owned by American International Group, Inc., a publicly held company.

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INTRODUCTION

Petitioner has not presented compelling reasons to grant his Petition for a Writ of *Certiorari*. *See* Sup. Ct. R. 10. The subject of the Petition is the Order of the U.S. Court of Appeals for the Eighth Circuit (the "Eighth Circuit") affirming a bankruptcy court's denial of Petitioner's motions to reopen his bankruptcy case. Denial of such a motion is reviewed under an abuse of discretion standard. The Eighth Circuit's decision is not in conflict with a decision of this Court or another Court of Appeals. Nor does this appeal involve an important federal question that has not been resolved by this Court. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Petitioner has been a debtor in three Chapter 13 bankruptcy cases in the U.S. Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court"). The first was filed in 1995, the second in 2000, and the third in 2001. *See Motion for Relief from Stay and to Ratify Foreclosure Sale ("Motion for Relief"), June 5, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 36.* Each case was dismissed prior to Petitioner obtaining a discharge due to his failure to make all payments required by his Chapter 13 plan. *See id.*; *Order, August 20, 2003, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 97.*

Following dismissal of the 1995 bankruptcy, Respondent sought to foreclose on real property on which it maintained a mortgage lien to secure the loan provided to Petitioner and his wife. Petitioner, however, filed two additional bankruptcy petitions on the eve of scheduled foreclosure sales, which stayed the foreclosure sales. *See Motion for Relief.*

In the third bankruptcy, Case No. 01-43603-399, Respondent sought and obtained relief from the automatic stay of 11 U.S.C. § 362(a) to conduct a foreclosure sale. *Order, April 19, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 18.* Following an *ex parte* hearing on the motion for relief from stay, the Bankruptcy Court granted relief to Respondent, which then conducted the foreclosure sale that day. *Id.; see Order, July 9, 2002, U.S. Dist. Ct. E.D. Mo., Case Number 4:01CV1435, Docket Number 34 ("July 9 Order").* Respondent purchased the property at the foreclosure sale. *Id.* The Bankruptcy Court later vacated the *ex parte* relief from stay order, conducted an evidentiary hearing on the motion, granted relief from stay and ratified the foreclosure sale (the "Relief from Stay Order"). *See Order, July 17, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 45; Transcript of Hearing, October 18, 2001, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 60.*

Petitioner appealed the Relief from Stay Order, and the U.S. District Court for the Eastern District of Missouri (the "District Court") affirmed. *July 9, 2002 Order.* Petitioner then appealed to the Eighth Circuit, which remanded the case to the Bankruptcy Court to report on two factual issues, namely (1) whether Petitioner had paid Respondent in full, or in part, and received a discharge in the first bankruptcy, and (2) if Petitioner was indebted to Respondent, the rate of interest, if any, applicable to the debt. *Opinion, March 24, 2003, Eighth Circuit, Case Number 02-3041.*

On remand, the Bankruptcy Court determined that the bankruptcy case in which the appeal was taken, the third bankruptcy case, had been dismissed on March 14, 2002, while the Relief from Stay Order was on appeal. *Order,*

August 20, 2003, Bankr. E.D. Mo., Case Number 01-43603, Docket Number 97. The Bankruptcy Court concluded that, because the automatic stay no longer was applicable due to the dismissal of the bankruptcy, Respondent's motion for relief from the automatic stay was moot. *Id.* As a result, the Bankruptcy Court denied the relief from stay motion by Order entered August 20, 2003 (the "Relief Denial Order"). *Id.*

Upon receipt of the Relief Denial Order from the Bankruptcy Court, the Eighth Circuit dismissed the appeal as moot. *Order, January 8, 2004, Eighth Circuit, Case Number 02-3041.*

Petitioner subsequently filed motions to reopen the third bankruptcy case, pursuant to 11 U.S.C. § 350(b)[1], on March 30, 2004, and March 31, 2004 (the "Motions to Reopen"). *Motions to Reopen, Bankr. E.D. Mo., Case Number 01-43603, Docket Numbers 103, 104.* The Motions to Reopen state that Petitioner "wants to bring an action for clarification of whether [Respondent's] motion . . . for relief from stay was denied because there was no stay in the Bankruptcy Case No. 95-42416-399 and that an order be issued to convey the property back to [Petitioner]." *Id.* The Bankruptcy Court summarily denied the Motions to Reopen. *Order, April 7, 2004, Bankr. E.D. Mo., Case Number 01-43503, Docket Number 105.*

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[1] Section 350 of the Bankruptcy Code provides as follows:

> (a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.
>
> (b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

On appeal, the District Court affirmed the denial of the Motions to Reopen. *Order, March 28, 2005, U.S. Dist. Ct. E.D. Mo., Case Number 4:04CV526, Docket Number 12.* The District Court also denied Petitioner's motion for reconsideration. *Order, April 8, 2005, U.S. Dist. Ct. E.D. Mo., Case Number 4:04CV526, Docket Number 14.* The Eighth Circuit summarily affirmed. *Order, August 17, 2005, Eighth Circuit, Case Number 05-2330.* Petitioner's petition for rehearing and for a rehearing en banc in the Eighth Circuit both were denied. *Order, October 21, 2005, Eighth Circuit, Case Number 05-2330.* The Petition for a Writ of *Certiorari* concerns the Eighth Circuit's decision affirming the denial of the Motions to Reopen.

Petitioner incorrectly asserts that his Petition challenges the jurisdiction of the Bankruptcy Court and the propriety of that court's entry of the Relief from Stay Order and the Relief Denial Order in light of the dismissal of his 1995 bankruptcy case. Those issues are not involved in this appeal. The Relief from Stay Order was appealed by Petitioner, but that appeal was dismissed as moot by the Eighth Circuit following receipt of the Relief Denial Order. Petitioner did not timely appeal the entry of the Relief Denial Order or the Eighth Circuit's dismissal of his prior appeal as moot. Instead of appealing those orders, he sought to reopen his bankruptcy, and when that effort failed through appeals to the Eighth Circuit, he lodged the present Petition. Accordingly, the Petition properly should address only the denial of the Motions to Reopen, not the issues that he might have raised in appeals he never timely pursued. Also, contrary to Petitioner's assertion, neither his Petition, the Relief from Stay Order nor the Relief Denial Order concern his 1995 bankruptcy case; they concern only the 2001 bankruptcy case.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals. Courts uniformly have held that the denial of a motion to reopen a bankruptcy case is reviewed for an abuse of discretion. Moreover, the decision of the Bankruptcy Court in this case was not an abuse of its discretion. Accordingly, Petitioner has not established compelling reasons for this Court to grant his Petition. *See* Sup. Ct. R. 10.

I. A Bankruptcy Court's Denial of a Motion to Reopen a Bankruptcy Case is Reviewed for Abuse of Discretion

Pursuant to 11 U.S.C. § 350(b), "a [bankruptcy] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other relief." The appellate courts below properly reviewed the Bankruptcy Court's decision not to reopen the bankruptcy case under an abuse of discretion standard. *Dworsky v. Canal Street Ltd. P'ship (In re Canal Street Ltd. P'ship)*, 269 B.R. 375, 379 (B.A.P. 8th Cir. 2001). Under this standard, a bankruptcy court's denial of a motion to reopen should not be reversed unless the appellate court has a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. *Id.*

In a case decided prior to enactment of the modern U.S. Bankruptcy Code, this Court addressed the standard for reviewing the denial of a motion to reopen a bankruptcy proceeding. In *Wragg v. Federal Land Bank of New Orleans*, 317 U.S. 325, 327 (1943), the Court held that "[w]e do not differ with the conclusion of both courts below that it was within the sound discretion of the bankruptcy court to decline

to reopen the original order of dismissal." Courts have applied the decision in *Wragg* in considering a motion to reopen under § 350(b) of the Bankruptcy Code. *See, e.g., In re Edmonds*, 27 B.R. 468, 469 (Bankr. E.D. Tenn. 1983) (citing *Wragg* for its holding that "it is within the sound discretion of the bankruptcy judge to either reopen a case or refuse to do so").

Application of an abuse of discretion standard in the Eighth Circuit was consistent with the standard uniformly applied by other Circuits in reviewing the denial of a motion to reopen a bankruptcy case. *See, e.g., In re Systems & Servs. Technologies, Inc. v. Davis (In re Davis)*, 314 F.3d 567, 570 (11th Cir. 2002) (review of bankruptcy court's order refusing to reopen is governed by abuse of discretion standard); *State Bank of India v. Chalasani (In re Chalasani)*, 92 F.3d 1300, 1307 (2d Cir. 1996) (bankruptcy court did not abuse its discretion denying motion to reopen adversary proceeding because debtor had failed to comply with discovery and reopening would prejudice creditor); *Thompson v. Virginia (In re Thompson)*, 16 F.3d 576, 581-82 (4th Cir. 1994), *cert. denied*, 512 U.S. 1221, 114 S. Ct. 2709, 129 L. Ed. 2d 836 (1994) (decision to reopen a bankruptcy case rests with discretion of bankruptcy court); *In re Bianucci*, 4 F.3d 526, 528 (7th Cir. 1993) (bankruptcy court did not abuse its discretion denying debtor's motion to reopen bankruptcy to avoid lien two years after case was closed); *Beezley v. California Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1435 (9th Cir. 1993) (per curiam) (bankruptcy court did not abuse its discretion denying debtor's motion to reopen to add creditor because reopening would not have resulted in any effective relief because bankruptcy was a no asset, no bar date case); *Price v. Haker (In re Haker)*, 411 F.2d 568, 569 (5th Cir. 1969) (per curiam) (denial of motion to reopen

to pursue newly discovered asset was not abuse of discretion because chance of recovery to creditors from asset was too remote); *Dworsky*, 269 B.R. at 379 (bankruptcy court's denial of creditor's motion to reopen case five years after confirmation was not abuse of discretion); *Rockland Trust Co. v. Sheerin (In re Sheerin)*, 21 B.R. 438, 440 (B.A.P. 1st Cir. 1982) (bankruptcy court did not abuse its discretion by refusing to reopen case to pursue untimely complaint to determine non-dischargeability of debt).

II. The Bankruptcy Court Properly Denied the Motions to Reopen

A. Petitioner Has Not Complied with His Bankruptcy Obligations

In affirming the Bankruptcy Court's denial of Petitioner's Motions to Reopen, the District Court held that "[b]ecause of [Petitioner's] failure to comply with the rules and requirements of a debtor in a Chapter 13, I cannot conclude that the bankruptcy court's decisions denying [Petitioner's] motions to reopen his bankruptcy case were an abuse of discretion." The Eighth Circuit summarily affirmed the District Court's decision.

A failure by a debtor to comply with the rules and requirements of bankruptcy is adequate grounds to deny the debtor's motion to reopen his bankruptcy case. *See State Bank of India*, 92 F.3d at 1307 (affirming denial of motion to reopen adversary proceeding because debtor had failed to comply with discovery). In this case, Petitioner has had three bankruptcy cases dismissed prior to making all payments required by his Chapter 13 plan. In the latter two cases, the filings were made on the eve of foreclosure sales scheduled by Respondent. In these circumstances, the denial of Petitioner's Motions to Reopen was not an abuse of discretion.

B. Reopening Petitioner's Case Would Have Been a Futile Exercise

The reopening of a bankruptcy case does not alone grant substantive relief to the movant. The reopening merely grants the opportunity to seek relief in a bankruptcy case that previously was closed. *See State Bank of India*, 92 F.3d at 1307-08; *Internal Revenue Serv. v. Germaine (In re Germaine)*, 152 B.R. 619 (B.A.P. 9th Cir. 1993).

If the relief sought to be obtained upon the reopening of the case is not available to the movant, it is not an abuse of discretion for a bankruptcy court to deny the reopening to avoid a futile exercise. *See Beezley*, 994 F.2d at 1435 (reopening would not have resulted in effective relief because bankruptcy was no asset, no bar date case); *Rockland Trust Co.*, 21 B.R. at 440 (reopening inappropriate to pursue untimely complaint); *In re Schicke*, 290 B.R. 792, 798 (B.A.P. 10th Cir. 2003) ("A bankruptcy court that refuses to reopen a Chapter 7 case that has been closed will not abuse its discretion if it cannot afford the moving party any relief in the reopened case."); *Arleaux v. Arleaux*, 210 B.R. 148, (B.A.P. 8th Cir. 1997) (upholding decision denying debtor's motion to reopen bankruptcy when to do so would provide no relief to debtor); *In re Potes*, 336 B.R. 731, 732 (Bankr. E.D. Va. 2005) (motion to reopen should be denied if "no useful purpose can be served by reopening . . . .") (*citing In re Carberry*, 186 B.R. 401 (Bankr. E.D. Va. 1995)); *In re Patterson*, 297 B.R. 110, 114 (Bankr, E.D. Tenn. 2003) ("the court will not reopen a case if doing so would be futile") (*quoting In re Phillips*, 288 B.R. 585, 587 (Bankr. M.D. Ga. 2002)); *In re Hardy*, 209 B.R. 371, 379-80 (Bankr. E.D. Va. 1997) (denying debtor's motion to reopen when doing so would be futile because underlying claim lacked merit).

Petitioner's 2001 bankruptcy case was dismissed in 2002 on motion of the Chapter 13 Trustee due to the failure of Petitioner to comply with his Chapter 13 Plan. Upon the dismissal, the property of the estate revested in the debtor, pursuant to 11 U.S.C § 349(b)(3),[2] and the automatic stay of 11 U.S.C. § 362 terminated,[3] pursuant to 11 U.S.C. § 362(c)(1).[4]

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[2] Section 349(b)(3) provides as follows:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title —
>
> . . . .
>
> (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

[3] Similarly, the automatic stay terminated upon the dismissal of the 1995 bankruptcy. Thus, Respondent was not stayed from collecting the debt Petitioner owed Respondent, and Petitioner had no obligation to seek to reopen the 1995 bankruptcy to seek relief from stay in the 2001 case to continue with the scheduled foreclosure sale.

[4] Section 362(c)(1) provides as follows:

> (c) Except as provided in subsections (d), (e), (f) and (h) of this section —
>
> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; . . . .

The reopening of a bankruptcy case does not reinstate the automatic stay. *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896 (B.A.P. 9th Cir. 1999). Thus, even if Petitioner's bankruptcy case had been reopened, the relief from stay issue would have remained a moot issue. Accordingly, reopening would have been a futile exercise.

CONCLUSION

Petitioner has not established compelling reasons for this Court to grant his Petition for a Writ of *Certiorari*. Accordingly, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted,

BENJAMIN C. ACKERLY
Counsel of Record
TYLER P. BROWN
HUNTON & WILLIAMS, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074
(804) 788-8200

Attorneys for Respondent